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ORDINANCE No. XXXIII OF 1949

AN

ORDINANCE

further to amend the Indian Income-tax Act, 1922, the Indian Finance Act, 1942, the Excess Profits Tax Ordinance, 1948, the Indian Finance Act, 1946, the Business Profits Tax Act, 1947, and the Taxation on Income (Investigation Commission) Act, 1947.

WHEREAS a Bill containing provisions further to amend the Indian Income-tax Act, 1922 (XI of 1922), the Indian Finance Act, 1942 (XII of 1942), the Excess Profits Tax Ordinance, 1948 (XVI of 1948), the Indian Finance Act, 1946 (VII of 1946), the Business Profits Tax Act, 1947 (XXI of 1947), and the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), has been introduced in the Dominion Legislature but not yet been passed;

AND WHEREAS an emergency has arisen which makes it necessary further to amend the aforesaid Acts for the purposes hereinafter appearing;

Now, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

CHAPTER 1

PRELIMINARY

1. Short title, extent, commencement and duration.—(1) This Ordinance may be called the Taxation Laws Amendment (Second) Ordinance, 1949.

(2) Chapter I shall be deemed to have come into force on the 31st day of March, 1949, and the remaining provisions of this Ordinance shall, unless otherwise expressly provided herein, come into force at once, and this Ordinance shall cease to have effect as soon as an Act entitled the Taxation Laws (Extension to Reorganised States and Amendment) Act, 1949, shall have come into force.

(CHAPTER II)

AMENDMENT OF THE INDIAN INCOME-TAX ACT, 1922

2. Amendment of section 5A, Act XI of 1922.—In sub-section (1) of section 5A of the Indian Income-tax Act, 1922 (hereinafter in this Chapter referred to as the Income-tax Act), for the words "not more than ten persons" the words "as many persons as it thinks fit" shall be substituted

3. Amendment of section 10, Act XI of 1922.—In section 10 of the Income-tax Act,—

(1) in sub-section (2),—

(i) after clause (v), the following clause shall be inserted, namely —

"(via) in respect of depreciation of buildings newly erected, or of machinery or plant being newly installed, after the 31st day of March, 1948, a further sum (which shall be deductible in determining the written down value) equal to the amount admissible under clause (vi) (exclusive of the extra allowance for double or multiple shift working of the machinery or plant and the initial depreciation allowance admissible under that clause for the first year of erection of the building or the installation of the machinery or plant) in the assessment for the year commencing with the 1st day of April, 1949

Provided that this clause shall not apply in respect of any building, machinery or plant which prior to the 1st day of April, 1948, had at any time been used for the purposes of business and had after the said date been transferred directly or indirectly from one business to another,"

(ii) in the second proviso to clause (vi) for the words "is sold" the words "is sold, whether during the continuance of the business or after the cessation thereof," shall be substituted;

(2) to clause (a) of sub-section (5) the following proviso shall be added, namely —

"Provided that where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business and the Income-tax Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee was the reduction of a liability to income tax (by claiming depreciation with reference to an enhanced cost) the actual cost to the assessee shall be such an amount as the Income tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, determine having regard to all the circumstances of the case"

4. Amendment of section 15B, Act XI of 1922.—To sub-section (2) of section 15B of the Income-tax Act, the following proviso shall be added namely —

"Provided that where any sum paid during the previous year as donation to the fund known as the Gandhi National Memorial Fund is in excess of the limits specified in this section the exemption granted under this section shall apply to the whole of that sum"

5. Insertion of new section 15C in Act XI of 1922.—After section 15B of the Income-tax Act the following section shall be inserted, namely:—

“15C *Exemption from tax of newly established industrial undertakings.*—(1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed six per cent. per annum on the capital employed in the undertaking, computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue.

(2) This section applies to any industrial undertaking which—

(i) is not formed by the splitting up or the reconstruction of business already in existence or by the transfer to a new business of building, machinery or plant used in a business which was being carried on before the 1st day of April, 1948;

(ii) has begun or begins to manufacture or produce articles in any Province of India at any time after the 31st day of March, 1948;

(iii) employs more than fifty persons; and

(iv) involves the use of electrical energy or any other form of energy which is mechanically transmitted and is not directly generated by human agency.

Provided that the Central Government may, by notification in the official Gazette, direct that the exemption conferred by this section shall not apply to any particular industrial undertaking.

(3) The profits or gains of an industrial undertaking to which this section applies shall be computed in accordance with the provisions of section 10.

(4) The tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking as is attributable to that part of the profits or gains on which the tax is not payable under this section.

(5) Nothing in this section shall affect the application of section 29A in relation to the profits or gains of an industrial undertaking to which this section applies, and for the purposes of that section, the expression ‘assessable income’ shall be deemed to include the profits or gains in respect of which the tax is not payable under this section.

(6) The provisions of this section shall apply to the assessments for the years commencing on the 1st day of April, 1949.”

6. Amendment of section 16, Act XI of 1922.—In clause (a) of sub-section (1) of section 16 of the Income-tax Act, for the words, figures and letter ‘section 15 and section 15B’ the words, figures and letters “section 15, section 15B and section 15C” shall be substituted.

7. Amendment of section 17, Act XI of 1922.—In sub-section (3) of section 17 of the Income-tax Act, after the words, figures and letter “or under section 15B” the words, figures and letter “or under section 15C” shall be inserted.

8. Amendment of section 18A, Act XI of 1922.—In section 18A of the Income-tax Act,—

(i) in sub-section (5), after the words "from the date of payment", the following shall be inserted, namely:—

"to the date of the provisional assessment made under section 23B, or if no such assessment has been made,";

(ii) in sub-section (6), in the first proviso, after the word 'Provided' the word "also" shall be inserted, and before the proviso as so amended, the following proviso shall be inserted, namely:—

"Provided that where a provisional assessment is made under section 23B, interest shall be calculated in accordance with the foregoing provision up to the date on which the tax as provisionally assessed is paid, and thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so assessed (in so far as it relates to income to which the provisions of section 18 do not apply) falls short of the said eighty per cent."

9. Insertion of new section 23B in Act XI of 1922.—After section 23A of the Income-tax Act, the following section shall be inserted, namely:—

"23B. *Power to make provisional assessment in advance of regular assessment.*—(1) The Income-tax Officer may, at any time after the receipt of a return made under section 22, proceed to make in a summary manner, a provisional assessment of the tax payable by the assessee on the basis of his return and the accounts and documents, if any, accompanying it, after giving due effect to (i) the allowance referred to in paragraph (b) of the proviso to clause (vi) of sub-section (2) of section 10, and (ii) any loss carried forward under sub-section (2) of section 21.

(2) A partner of a firm may be provisionally assessed under sub-section (1) in respect of his share in the firm's income, profits and gains, if its return has been received, although the return of the partner himself may not have been received.

(3) A firm may be provisionally assessed under sub-section (1) as if it were an unregistered firm, unless the firm fulfils such conditions as the Central Government may, by notification in the official Gazette, specify in that behalf.

(4) There shall be no right of appeal against a provisional assessment made under sub-section (1).

(5) For the avoidance of doubt, it is hereby declared that the provisions of section 45 (except the first proviso) and section 46 apply in relation to any tax payable in pursuance of a provisional assessment made under sub-section (1) as if it were a regular assessment made under section 23.

(6) Income-tax paid or deemed to have been paid under section 18 or section 18A in respect of any income provisionally assessed under sub-section (1), shall be deemed to have been paid towards the provisional assessment.

(7) After a regular assessment has been made under section 23, any amount paid or deemed to have been paid towards a provisional assessment made under sub-section (1), shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment, exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

(8) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits, of any issue which may arise in the course of the regular assessment under section 28."

10. Amendment of section 54, Act XI of 1922.—In sub-section (3) of section 54 of the Income-tax Act,—

(i) in clause (d) after the word "suit" the words "or proceeding" shall be inserted;

(ii) in clause (j) the words "on agricultural income" shall be omitted.

11. Amendment of section 64, Act XI of 1922.—In clause (b) of sub-section (5) of section 64, the words "by him" shall be omitted and shall be deemed never to have been inserted.

CHAPTER III

AMENDMENT OF THE INDIAN FINANCE ACT, 1942

12. Amendment of section 10, Act XII of 1942.—To sub-section (1) of section 10 of the Indian Finance Act, 1942, after the fourth proviso, the following further proviso shall be added, namely:—

"Provided further that if it is subsequently found that the sum repaid in accordance with the provisions of this sub-section was in excess of the sum so repayable, the sum repaid in excess may be recovered in the same manner as excess profits tax may be recovered under the Excess Profits Tax Act, 1940 (XV of 1940), and notwithstanding anything contained in sub-section (7) of section 46 of the Indian Income-tax Act, 1922 (XI of 1922), as made applicable by section 21 of the Excess Profits Tax Act, 1940, such recovery may be made at any time."

CHAPTER IV

AMENDMENT OF THE EXCESS PROFITS TAX ORDINANCE, 1943

13. Amendment of section 2, Ordinance XVI of 1943.—For sub-section (3) of section 2 of the Excess Profits Tax Ordinance, 1943, the following sub-section shall be substituted, namely:—

"(3) Any further sum, such as is referred to in sub-section (1), deposited in accordance with the provisions of that sub-section, whether before or after the commencement of the Taxation Laws Amendment Ordinance, 1949, shall not be repaid by the Central Government unless five years have expired from the date on which the deposit was made:

Provided that the Central Government may repay any such deposit before the expiry of the period specified herein if it is satisfied that such repayment is in the public interest."

CHAPTER V

AMENDMENT OF THE INDIAN FINANCE ACT, 1946

14. Amendment of section 11, Act VII of 1946.—To sub-section (12) of section 11 of the Indian Finance Act, 1946, the following proviso shall be added, namely:—

"Provided that where, subsequent to any repayment made under the provisions of section 10 of the Indian Finance Act, 1942 (VII of 1942) or section 2 of the Excess Profits Tax Ordinance, 1948 (XVI of 1948), a reduction in the excess profits tax is effected whether by relief given in respect of a deficiency of profits, or by relief given in respect of a double excess profits tax, or by an order passed in any appeal, or otherwise, the sum to be refunded to the assessee on account of such reduction shall be decreased by such proportion thereof as the amount already repaid bore to the excess profits tax before the reduction as aforesaid."

CHAPTER VI

AMENDMENT OF THE BUSINESS PROFITS TAX ACT, 1947

15. Amendment of section 4, Act XXI of 1947.—In section 4 of the Business Profits Tax Act, 1947 (hereinafter in this Chapter referred to as the Business Profits Tax Act), after the first proviso, the following further proviso shall be inserted, namely:—

"Provided further that where the profits include any profits from an industrial undertaking which are exempt from income-tax under section 15C of the Indian Income-tax Act, 1922 (XI of 1922), the business profits tax otherwise payable on the whole of the taxable profits shall be reduced by an amount which bears to that business profits tax the same proportion as the amount of such inclusion bears to the whole profits."

16. Amendment of Schedule II, Act XXI of 1947.—(1) To rule 2 of Schedule II to the Business Profits Tax Act, the following *Explanation* shall be added, namely:—

"*Explanation.*—A reserve or paid-up share capital brought into existence by creating or increasing (by re-valuation or otherwise) any book asset is not capital for the purposes of ascertaining the abatement under this Act in respect of any chargeable accounting period."

(2) The amendment made by sub-section (1) shall be deemed to have had effect from the date on which the Business Profits Tax Act came into force.

CHAPTER VII

AMENDMENT OF THE TAXATION ON INCOME (INVESTIGATION COMMISSION) ACT, 1947

17. Amendment of section 3, Act XXX of 1947.—For clause (b) of section 3 of the Taxation on Income (Investigation Commission) Act, 1947 (hereinafter in this Chapter referred to as the Investigation Commission Act), the following clause shall be substituted, namely:—

"(b) to investigate in accordance with the provisions of this Act any case or points in a case referred to it under section 5 and make a report thereon (including such interim reports as the Commission may think fit) to the Central Government in respect of all or any of the assessments made in relation to the case before the date of its report or interim report, as the case may be;"

18. Amendment of section 6, Act XXX of 1947.—In section 6 of the Investigation Commission Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(7) The Commission shall have power to require any person or banking or other company to prepare and furnish on or before a specified date written statements of accounts and affairs verified in such manner as may be prescribed by the Commission and, if so required by the Commission, also duly verified by a qualified auditor, giving information on such points or matters as in the opinion of the Commission may, directly or indirectly, be useful for, or relevant to, any case referred to it and any person or banking or other company so required shall be bound notwithstanding any law to the contrary, to comply with such requirement”.

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) For the purpose of any investigation, the Commission may impound and retain in its custody, for such period as it thinks fit, any document produced before it.”;

(iii) in sub-section (4), for the brackets, figures and word “(7) and (2)”, the brackets, figures, word and letter “(1), (2) and (2A)” shall be substituted;

(iv) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) Where in the opinion of the Commission any person or banking or other company is likely to be in possession of any information or document which may, directly or indirectly, be useful for, or relevant to, any case referred to it or any case likely to be reported by the Commission to the Central Government under the provisions of sub-section (4) of section 5, the Commission, and, subject to the direction of the Commission, any authorised official, may make enquiries in such manner as it or he may deem fit and obtain from such person or banking or other company statements, on oath or otherwise, on such points or matters as may be specified; and for the purpose of any such enquiry, the Commission and the authorised official shall have all the powers conferred on them by sub-sections (1), (2), (2A), (3) and (4)”.

(v) for sub-section (9) the following sub-section shall be substituted, namely:—

“(9) Subject to any rules made in this behalf under this Act, any authorised official shall have power—

(i) to examine at all reasonable times any books of account or other documents which in his opinion will be useful for or relevant to the proceedings in any case under this Act;

(ii) if specially authorised in this behalf by the Commission, to enter any building or place where he has reason to believe that any such books of account or documents may be found;

(iii) to seize any such books of account or documents or place marks of identification thereon and make extracts or copies therefrom;

(iv) in the course of any search under this section, to make a note or an inventory of any other article or thing found in the course of such search which in his opinion may be useful for or relevant to the disposal of any case under this Act;

and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to searches, so far as can be made applicable, shall apply to searches made under the authority of this section."

19. Insertion of new sections 6A and 6B in Act XXX of 1947.—After section 6 of the Investigation Commission Act, the following sections shall be inserted, namely:—

"6A. Power of Commission to tender immunity from prosecution, etc.—

(1) At any stage of the investigation into a case referred to it under section 5, the Commission may, with a view to obtaining the evidence of any person appearing to have been, directly or indirectly, concerned in or privy to the evasion of payment of taxation on income in such case and after recording its reasons for so doing, tender to such person immunity from prosecution for any offence under the Indian Income-tax Act, 1922 (XI of 1922), the Indian Penal Code (Act XLV of 1860) or any other law for the time being in force, and also from the imposition of any penalty under the Indian Income-tax Act, 1922, on condition of his making a full and true disclosure of the whole of the circumstances relative to the evasion of payment of taxation on income and to every other person concerned, whether as principal, agent or abettor, in such evasion.

(2) Nothing contained in sub-section (1) shall render any person immune from liability to taxation on so much of his income as may be found to have been concealed or to have escaped taxation.

(3) Every person accepting a tender of immunity under this section shall be examined as a witness before the Commission.

6B Withdrawal of tender of immunity in certain cases—(1) If at any time after the tender of immunity under section 6A it appears to the Commission that any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, the Commission may record a finding to that effect, and thereupon the immunity shall be deemed to be withdrawn, and any such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under the Indian Income-tax Act, 1922 (XI of 1922), to which he would otherwise have been liable.

(2) If no such finding as is referred to in sub-section (1) is recorded by the Commission, the person to whom a tender of immunity has been made and has been accepted by him shall not be liable to prosecution for any offence in respect of which the tender of immunity was made or to the imposition of any penalty under the Indian Income-tax Act, 1922, to the extent covered by such immunity."

20. Insertion of new section 8A in Act XXX of 1947.—After section 8 of the Investigation Commission Act, the following section shall be inserted, namely:—

"8A Settlement of cases under investigation.—(1) Where any person concerned in any case referred to or pending before the Commission for investigation applies to the Commission at any time during such investigation to have the case or any part thereof settled in so far as it relates to him, the Commission shall, if it is of opinion that the terms of the settlement contained in the application may be approved, refer the matter to the Central Government, and if the Central Government accepts the terms of such settlement the Commission shall have the terms thereof recorded and thereupon the investigation, in so far as it relates to matters covered by such settlement, shall be deemed to be closed.

(2) For the purpose of enforcing the terms of any settlement arrived at in pursuance of sub-section (1), the Central Government may direct that such proceedings as may be appropriate under the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940) or any other law may be taken against the person to whom the settlement relates, and, in particular, the provisions of the second proviso to clause (a) of sub-section (5) of section 23, section 24B, the proviso to sub-section (2) of section 20A, the proviso to sub-section (2) of section 26 and sections 44 and 46 of the Indian Income-tax Act, 1922, shall be applicable to the recovery of any sum specified in such settlement by the Income-tax officer having jurisdiction to assess the person by whom such sum is payable as if it were income-tax or an arrear of income-tax within the meaning of those provisions.

(3) Subject to the provisions of sub-section (6) of section 8, any settlement arrived at under this section shall be conclusive as to the matters stated therein, and no person whose case has been so settled shall be entitled to reopen in any proceeding for the recovery of any sum under this section or in any subsequent assessment or reassessment proceeding relating to taxation on income or in any other proceeding before any Court or other authority any matter which forms part of such settlement.

(4) Nothing contained in this section shall, unless otherwise expressly specified in the settlement, be a bar to the initiation of proceedings under section 84 of the Indian Income-tax Act, 1922."

CHAPTER VIII

MISCELLANEOUS

21. Repeal and saving.—(1) The Indian Income-tax (Amendment) Ordinance, 1948 (XXXVIII of 1948), is hereby repealed.

(2) Notwithstanding the expiry of the Excess Profits Tax (Amendment) Ordinance, 1948 (XXVII of 1948), and the Taxation on Income (Investigation Commission) (Amendment) Ordinance, 1948 (XXXV of 1948), or the repeal by this Ordinance of the Indian Income-tax (Amendment) Ordinance, 1948, anything done or any action taken in the exercise of any power conferred by any of the Ordinances referred to in this section shall for all purposes be deemed to have been done or taken in the exercise of the powers conferred by this Ordinance as if this Ordinance had been in force on the day such thing was done or such action was taken.

22. Validation of action taken under Ordinance IX of 1949.—Notwithstanding the expiry of the Taxation Laws Amendment Ordinance, 1949 (IX of 1949), anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Ordinance as if this Ordinance were in force on the day on which such thing was done or action was taken.

C. RAJAGOPALACHARI,

Governor General

K. V. K. SUNDARAM,

Secy. to the Govt. of India.

